

Clean Indoor Air Act of 2008

Frequently Asked Questions

Web:

smokefree.ne.gov

Phone:

1-877-633-7331

E-mail: dhhs.smokefree@nebraska.gov

What is the law's purpose?

The purpose of the Nebraska Clean Indoor Air Act is to protect the public health and welfare by prohibiting smoking in public places and places of employment.

What does the law cover?

The Act eliminates smoking in enclosed indoor areas including restaurants, bars, keno establishments, horse racing venues and other workplaces (retail/office space, manufacturing, etc.) as well as indoor public places.

Does the law cover only bars and restaurants?

No, the law also covers any enclosed indoor area of public places or places of employment.

Are there any exceptions to the law?

The only exceptions are:

- Up to 20 percent of hotel rooms.
- Tobacco retail outlets defined as a “store that sells only tobacco and products directly related to tobacco. Products directly related to tobacco do not include alcohol, coffee, soft drinks, candy, groceries or gasoline.”
- Cigar shops as defined below
- Facilities researching the health effects of smoking.
- Private residences, except when a residence is being used as a licensed child care program.

Some cities may have a local ordinance prohibiting indoor smoking, and those ordinances may not allow exceptions. In those cases, the local ordinance would apply.

What about cigar shops?

In February 2015, the Legislature passed an additional exemption to the Nebraska Clean Indoor Air Act for cigar shops. Cigar shops are establishments that:

- Hold a Class C liquor license
- Annually receive ten percent or more of gross revenue from the sale of cigars and other tobacco products and tobacco-related products, except cigarettes
- Have a walk-in humidior on the premises
- Do not sell food
- Do not permit the smoking of cigarettes
- Do not discount alcohol if sold in combination with cigars or other tobacco products and tobacco-related products
- Do not allow anyone under 21 years of age to smoke or purchase any product in the cigar shop
- Post a sign on all entrances to the cigar shop, on the outside of each door, in a conspicuous location slightly above or next to the door, with the following statement: SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE THIS BUSINESS. SMOKING OF CIGARETTES IS NOT ALLOWED.
- Beginning on November 1, 2015, the cigar shop licensee shall provide the Liquor Control

Commission a waiver signed by each employee of the cigar shop stating that he/she will be exposed to second-hand smoke and the employee shall acknowledge that he/she understands the risks of exposure to second-hand smoke.; and

- Pay an initial nonrefundable application fee of \$1,000.

This is also the only exemption to the Act that cannot be altered by county resolution or city ordinance. The Nebraska Liquor Control Commission (LCC) administers the cigar shop application process. Contact the LCC with any questions at www.lcc.ne.gov or (402) 471-2571.

What about outdoor environments?

Outdoor environments are not specifically covered by the Nebraska Clean Indoor Air Act of 2008. However, businesses may voluntarily choose to create smoke-free outdoor areas.

Is there a distance requirement away from doors where smokers can smoke outside?

No. Businesses have the authority, however, to set a distance limit for smokers from their doorways.

What is an “indoor area”?

Indoor area is defined as “an area enclosed by a floor, a ceiling and walls on all sides that are continuous and solid except for closeable entry and exit doors and windows and in which less than twenty percent of the total wall area is permanently open to the outdoors. For walls in excess of eight feet in height, only the first eight feet shall be used in determining such percentage.”

Where can I find more details on whether or not an outdoor smoking area is in compliance with the law?

An outdoor area compliance guidance document has been prepared by the Nebraska Department of Health and Human Services and is available at: <http://bit.ly/OutdoorAreaCompliance>.

Can employees work in outdoor beer gardens that allow smoking?

Yes.

Are Alcoholics Anonymous and other 12-step meetings exempt from the law?

No.

Can a business with large garage doors allow smoking indoors when the garage doors are open?

No.

Are signs required?

The law only requires signage for cigar shops and tobacco retail outlets, but other businesses may post signs to help inform customers about the law.

- Cigar shops must post a sign on all entrances to the cigar shop, on the outside of each door, in a conspicuous location slightly above or next to the door, with the following statement: SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE THIS BUSINESS. SMOKING OF CIGARETTES IS NOT ALLOWED.

Tobacco retail outlets must post a sign on all entrances to the tobacco retail outlet, on the outside of each door, in a conspicuous location slightly above or next to the door, with the following statement: SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE THIS BUSINESS. SMOKING OF CIGARETTES IS NOT ALLOWED.

Are no smoking signs available for businesses?

No smoking door decals are available free of charge by calling 1-877-633-7331, e-mailing: dhhs.smokefree@nebraska.gov, or by contacting your local health department. These decals do not meet the signage requirement for cigar shops and tobacco retail outlets.

What are the penalties for breaking the law?

A person who smokes in a place of employment or a public place in violation of the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor (maximum \$100 fine) for the first offense and Class IV misdemeanor (minimum \$100, maximum \$500) for the second and any subsequent offenses. Charges can be dismissed upon successful completion of a smoking cessation program. A proprietor that fails, neglects or refuses to perform a duty under the Act is guilty of a class V misdemeanor for the first offense and Class IV misdemeanor for the second and subsequent offenses.

How do I file a complaint if I think a business is out of compliance?

To file a complaint, either contact Jeremy Poell at 1-877-633-7331 or dhhs.smokefree@nebraska.gov or contact your local health department. You can also fill out an on-line complaint form at <http://bit.ly/NCIAAReportForm>.

What are my responsibilities if I am business owner or manager?

Compliance with the provisions of the law is the responsibility of the business owner of a public place or place of employment where smoking is prohibited. To ensure compliance a proprietor must take measures that may include:

1. Posting appropriate signs to inform the public that smoking is not allowed.
2. Removing any smoking paraphernalia designed for on-site use such as ashtrays.

How does a business deal with customers who want to smoke?

Remind your customers of the law and politely explain that they must step outside to smoke. Also train your staff about what to say to customers, for example: "We're smoke-free, you'll have to put out your cigarette," or "The law prohibits smoking indoors. Thanks for your cooperation."

What if a customer refuses to comply?

If necessary use your normal protocol for removing a disruptive customer from your premises.

Are there resources available to help with implementing the law at my business or in my community?

Yes. Several resources including decals are available at: <http://bit.ly/SFResources>.

What about local smoke-free air laws?

Local laws addressing smoke-free environments that are stronger than the state law remain in force. Local communities continue to have the authority to enforce and pass laws regarding smoke-free environments that are stronger than state law.

Does the Act restrict businesses or communities from designating non-smoking areas outdoors?

No.

Are businesses required to provide an outdoor smoking area?

No. Whether or not businesses provide an outdoor smoking area is an individual decision.

Are electronic cigarettes (e-cigarettes) or chewing tobacco allowed?

Yes. The law only prohibits smoking indoors. Any cigarette-like device or tobacco product that is not "lit" does not meet the definition of smoking, so their use is allowed indoors. Businesses have the authority, however, to prohibit the use of these products within their business. It may be in the best interest of a business (especially bars) to prohibit the use of e-cigarettes because their appearance is so similar to conventional cigarettes that there could be confusion by the public about whether or not the bar is in compliance with the law.

"No smoking, including e-cigarettes" door decals are available free of charge by calling 1-877-633-7331, e-mailing: dhhs.smokefree@nebraska.gov, or by contacting your local health department.

Is hookah smoking allowed?

Hookah use is prohibited under the law just as cigar, pipe, or cigarette use is with a few exceptions. If a facility meets one of the stated exceptions (see question/answer above), then hookah smoking would be allowed just as cigarette, cigar, and pipe smoking would be allowed.

Is smoking allowed in private offices or break rooms?

No.

Is smoking allowed in vehicles?

The Act does not restrict smoking in commercial vehicles, but businesses are free to implement their own smoke-free vehicle policy.

Can people smoke in a business when it is NOT open to the public such as after hours, on weekends, or on holidays?

No. Smoking is prohibited at all times in businesses that are not exceptions to the law. The only exceptions to the law are:

- Up to 20 percent of hotel rooms.
- Tobacco retail outlets defined as a "store that sells only tobacco and products directly related to tobacco. Products directly related to tobacco do not include alcohol, coffee, soft drinks, candy, groceries or gasoline."
- Cigar shops as defined above
- Facilities researching the health effects of smoking.
- Private residences, except when a residence is being used as a licensed child care program.

Is smoking allowed in "private clubs" like VFWs or American Legions?

It depends on the club's status as a public place and as a place of employment. If the club retains employees or allows the public to access the facility, then it will need to be smoke-free.

What resources are available to help employees quit smoking?

The Nebraska Tobacco Quitline is sponsored by the Nebraska Department of Health and Human Services, Tobacco Free Nebraska program. The toll-free Quitline, 1-800-784-8669 (1-800-QUIT-NOW), gives Nebraska residents 24/7 access to counseling and support services. Calls to the Quitline are free. There are also local tobacco cessation programs available across the state which may be helpful. For a list of known programs, visit: <http://bit.ly/NETobaccoQuitPrograms>.

This information is not intended to be legal advice. Please consult state statutes or contact an attorney for more information about the Nebraska Clean Indoor Air Act.

July 2015